

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-103975-14

Date:

July 29, 2014

LEGEND

X =

Y =

Trust =

D1 =

D2 =

D3 =

D4 =

State =

Dear :

This responds to a letter dated January 14, 2014, and subsequent information, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted, Y was incorporated on D1, under the laws of State. Effective D2, Y elected to be taxed as an S corporation. X represents that, on D4, Y merged with and into X in a qualified reorganization within the meaning of § 368(a)(1)(F). Following the reorganization, X continued as an S corporation.

On D3, Y shares were transferred to Trust. X represents that Trust is eligible to be a qualified subchapter S trust (QSST). However, the beneficiary of Trust failed to timely file a QSST election for Trust, thus causing Y's S election to terminate effective D3.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent. X further represents that X (and previously Y) and its shareholders have filed their income tax returns consistent with having a valid S election in effect since D2 and have treated Trust as a QSST since D3.

LAW AND ANALYSIS

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) of the Code provides that for purposes of § 1361(b)(1) a trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(d)(1) of the Code provides that, in the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under § 1361(d)(2), such trust shall be treated as a trust described in § 1361(c)(2)(A)(i) and for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1362(d)(2) is made.

Section 1361(d)(3) of the Code defines the term "qualified subchapter S trust" as a trust all of the income (within the meaning of § 643(b)) of which is distributed (or required to

be distributed) currently to one individual who is a citizen or resident of the United States. In addition, the terms of the trust must require that (i) during the lifetime of the current income beneficiary, there shall be only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation is treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude Y's S election terminated on D3 when Trust became a shareholder and a QSST election was not timely filed. We also conclude that the termination of Y's S election was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), X (and Y) will be treated as continuing to be an S corporation from D3 and thereafter, provided that X's (and Y's) S election is valid and not otherwise terminated under § 1362(d).

This relief is contingent upon Trust's beneficiary filing a QSST election for Trust effective D3 within 120 days from the date of this letter. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning the eligibility of X or Y as an S corporation or Trust as a QSST.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

Joy C. Spies

Joy C. Spies

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes